

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2436 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

DEEPAK BIPINBHAI PAREKH

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MR DP JOSHI AGP for Respondent Nos. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/11/1999

ORAL JUDGEMENT

#. Heard the learned advocate Shri Satish R. Patel for the petitioner and Shri D.P. Joshi, learned AGP for respondent nos. 1, 2 & 3.

#. The detention order dated 3rd January, 1999 passed by respondent no. 1 - Commissioner of Police, Rajkot city against the petitioner in exercise of power under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA" for short) is challenged in the present

petition under Article 226 of the Constitution of India.

#. The grounds of detention served to the petitioner under section 9(1) of PASA, copy of which is produced at Annexure : C indicate that two criminal cases are registered against the petitioner at Malaviyanagar Police Station, Rajkot City on 24.12.98. That the offences charged in the said cases are made punishable under sections 406, 420, 467, 468, 471, 472, 473, 474, 489A,B & C read with section 120B of I.P.C. It is alleged against the petitioner that the petitioner in conspiracy with his accomplice forged and fabricated valuable security like stamp papers, Indira Vikas Patra, Revenue Stamps, stamps for transfer of shares etc. and on account of that record has illegally earned approximate amount of Rs. 74,07041/-.

#. Over and above the material on the above-stated two criminal cases which were pending investigation, two witnesses on assurance of anonymity supplied information against the petitioner and his anti-social activity of making false documents of valuable securities and putting them in circulation thereby causing damage to the economy of the nation. That on the basis of the said material, respondent no.1 as detaining authority has come to a conclusion that the petitioner is a "dangerous person" within the meaning of section 2 (c) of the PASA. That resort to general provisions of law being insufficient to prevent the petitioner from continuing his anti-social activity, the impugned order has been passed.

#. The petitioner has challenged the impugned order on numerous grounds. It has been contended at bar that on behalf of the petitioner that on the date of passing of the impugned order, the petitioner was in judicial custody in respect to criminal case registered against him. That the detaining authority has failed to consider the less drastic remedy of opposing or claiming cancellation of bail granted by the court to the petitioner which shows non application of mind and has vitiated the subjective satisfaction. Reliance is placed on the observation of this Court made in the matter of Zubedabibi Rashidkhan Pathan vs. State of Gujarat reported vide 1995(2) GLR 1134.

#. On scrutiny of papers, it appears that in para 8 of the grounds of detention, the detaining authority has observed that the petitioner-detenu was in judicial custody, however, it is likely that he would be released on bail and after getting released on bail, the petitioner is likely to continue his anti-social

activity. The said grounds stated by the detaining authority clearly disclosed non application of mind particularly to the aspect of opposing or claiming cancellation of bail on repeated offences. That in the proceedings of L.P.A. 1056 of 1999, decided on 15.9.99 (Coram: C.K.Thakkar & A.L.Dave, JJ), a view is expressed in the mater of Zubedabibi Rashidkhan Pathan (Supra) has been followed and approved.

#. Following the said dictum of law, in the instant case, the grounds of detention particularly observation made in para 8 disclosed non application of mind on the part of the detaining authority by not considering the aspect of less drastic remedy like cancellation of bail in a pending case and thus, it has vitiated the subjective satisfaction and has rendered the order invalid.

#. As the petition succeeds on the above-stated ground alone, it is not necessary to consider other contentions raised by the petitioner.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 3.1.99 passed by respondent no.1 against the petitioner is hereby quashed and set aside. The petitioner-detenu-Deepak Bipinbhai Parekh is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

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